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*Attorneys for Plaintiff Eric Schiermeyer*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

ERIC SCHIERMEYER, Derivatively on  
Behalf of Nominal Defendant, BLOCKCHAIN  
GAME PARTNERS, INC. D/B/A GALA  
GAMES,  
Plaintiff,

vs.  
WRIGHT THURSTON and TRUE NORTH  
UNITED INVESTMENTS, LLC,  
Defendants,

and  
BLOCKCHAIN GAME PARTNERS, INC.  
D/B/A GALA GAMES,  
Nominal Defendant.

TRUE NORTH UNITED INVESTMENTS,  
LLC, Derivatively on Behalf of Nominal  
Defendant, BLOCKCHAIN GAME  
PARTNERS, INC. D/B/A GALA GAMES,  
Counterclaimant,

vs.  
ERIC SCHIERMEYER,  
Counterdefendant,

**ERIC SCHIERMEYER'S MOTION FOR  
LEAVE TO FILE SURREPLY BRIEF**

Case No. 2:23-cv-00589-HCN-DAO

Judge Howard C. Nielson

Magistrate Judge Daphne A. Oberg

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and  
BLOCKCHAIN GAME PARTNERS, INC.  
D/B/A BGP GAMES,  
Nominal Counterdefendant.

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TRUE NORTH UNITED INVESTMENTS,  
LLC,  
Crossclaim Plaintiff  
vs.  
BLOCKCHAIN GAME PARTNERS, INC.  
D/B/A BGP GAMES,  
Crossclaim Defendant.

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Plaintiff Eric Schiermeyer, derivatively and on behalf of Nominal Defendant Blockchain Game Partners, Inc. (“BGP” or the “Company”), respectfully files this Motion for Leave to File a Surreply (the “Motion”), and requests that the Court grant leave to file a surreply to Defendants’ Consolidated Reply in Support of Motion for Restraining Order to Maintain Status Quo and Request for Immediate Hearing (“Defendants’ Reply”) (Dkt. No. 76), filed by Counterclaimants/Defendants Wright Thurston, True North United Investments, LLC (collectively “Defendants”).

1. Plaintiff Schiermeyer submitted his Opposition Brief (Dkt. No. 68) on November 14, 2023, setting forth the manifold deficiencies in the counterclaims upon which True North based its Motion for a Mandatory Restraining Order (Dkt. No. 63). True North, recognizing that its initial counterclaims were indeed deficient, filed an Amended Answer and Amended Counterclaims on November 16, 2023 (Dkt. No. 75). The Amended Counterclaims significantly revised the counterclaims upon which True North’s motion was initially founded and added three new counterclaims. In short, True North now bases its Motion for a Mandatory Restraining Order on claims which Plaintiff has had no opportunity to address in briefing.

2. “Courts should generally allow the nonmoving party to respond to material—whether evidence or argument—that the movant raises for the first time in a reply.” *Clancy v. Miller*, 837 F. App’x 630, 634 (10th Cir. 2020); *see also Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005). Courts do not consider issues raised for the first time in a reply brief because it robs the opposing party “of the opportunity to demonstrate that the record does not support [a] factual assertion and to present an analysis of the pertinent legal precedent that may compel a contrary result.” *Stump v. Gates*, 211 F.3d 527, 533 (10th Cir. 2000) (internal citation omitted).

3. Because True North now bases its Motion for a Mandatory Restraining Order on different counterclaims than those that had been filed when Plaintiff filed his Opposition, Plaintiff respectfully requests that the Court grant leave to file a concise surreply brief up to ten pages — just as Defendants were permitted (Dkt. No. 43). This will allow the issues to be fully and fairly briefed for the Court’s consideration.

4. Due to the upcoming holiday, Plaintiff’s counsel is presently traveling out of the country. Thus, Plaintiff respectfully requests until Monday, December 4, 2023, to file his surreply.

DATED this 20<sup>th</sup> day of November, 2023.

SNELL & WILMER L.L.P.

*/s/ Paul W. Shakespear* \_\_\_\_\_

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